

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
AND
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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SUMMARY

In this phase of the “Lifeline/Link Up” proceeding of the Federal Communications Commission (“FCC” or “Commission”), the FCC has sought comment on four specific issues – a new Broadband Pilot program; a proposed limitation of one Lifeline/Link Up subsidy per household; eligible subsidies for the Link Up program; and the sampling methodology for verifying consumer eligibility. The National Association of State Utility Consumer Advocates (“NASUCA”) and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “Consumer Advocates”) have reviewed others’ initial comments, many of which echo concerns that Consumer Advocates raised in their initial comments.

Some comments express concern with the impact of subsidizing broadband on the size of the Universal Service Fund. In response, Consumer Advocates urge the Commission to classify broadband as a telecommunications service, to revise the definition of supported services to include broadband, and to require broadband services to contribute to the USF. It is equally (if not more) important to allocate public monies to enable broadband *adoption* by the nation’s neediest households so as it is to allocate public monies to subsidize broadband *deployment* by the nation’s carriers. Consumer Advocates concur with comments that contend that Lifeline subsidies should not be used for equipment and training, and, therefore, other, non-USF sources of funding should be address this affordability issue. Certain comments include specific and detailed recommendations that merit the FCC’s consideration, including proposed measures to facilitate participation by eligible households in any broadband pilot programs that the FCC implements.

Consumer Advocates concur with concerns about the adverse impact of the FCC's proposed limitation of one Lifeline and Link Up discount per residential address may have on vulnerable low-income consumers who live in group housing, shelters, or are homeless.

The FCC should set a reasonable reimbursement cap on the Link Up subsidy that is based on cost. Under no circumstances should the Low Income portion of the USF pay for service initiation fees that are only applied to Link-Up consumers. While Consumer Advocates recognize that small ETCs should not be unduly burdened, any verification sample size must be large enough to provide meaningful results.

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) as an organization and the New Jersey Division of Rate Counsel (“Rate Counsel”) as an agency representing New Jersey consumers and as a member of NASUCA (collectively, “Consumer Advocates”) hereby respond to comments submitted in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice (“Notice”) seeking targeted comments regarding the proposed Lifeline broadband pilot program; a “one-per-residence” limitation on Lifeline benefits; Link Up reimbursement; and the sampling methodology for consumer

eligibility verification.¹ Consumer Advocates do not repeat all of their arguments contained in initial comments but respond to specific comments of other parties in this reply.²

II. REPLY TO COMMENTS

A. Broadband Pilot Program

Access to broadband is clearly an important public policy goal and affordability is key to broadband subscribership. Consumer Advocates reiterate their support for Lifeline funding for broadband: the further inquiry that the FCC has undertaken with the Public Notice highlights the fact that many details must be resolved before a broadband pilot can be undertaken. However, as Consumer Advocates have stated previously, the FCC should first classify broadband as a telecommunications service and also must revise the definition of supported services to include broadband.³ If broadband services are subsidized, those services must contribute to the fund.⁴

CenturyLink opposes a “reflexive expansion of the Lifeline/Link Up Program to broadband” and expresses support first for the deployment and upgrading of infrastructure in

¹ / Federal Communications Commission Public Notice, “Further Inquiry into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding,” WC Docket Noss 11-42, 03-109; CC Docket No. 96-45, DA 11-1346, August 5, 2011 (“Notice”).

² / Comments Of Advocates For Basic Legal Equality, Inc.; Community Voice Mail; Community Counseling Of Bristol County; Crossroads Urban Center; Disability Rights Advocates; Legal Services Advocacy Project; Low Income Utility Advocacy Project; National Center For Medical-Legal Partnership; National Consumer Law Center, on behalf of our low-income clients; New Jersey Shares; Ohio Poverty Law Center; Open Access Connections; Pennsylvania Utility Law Project; Pro Seniors, Inc.; Salt Lake Community Action Program; Texas Legal Services Center; Virginia Citizens Consumer Council (“Consumer Groups”); Michigan Public Service Commission (“Michigan PSC”); Missouri Public Service Commission (“Missouri PSC”); CenturyLink; TracFone Wireless, Inc. (“TracFone”); COMPTel; Sprint Nextel Corporation (“Sprint”); AT&T; California Public Utilities Commission (“California PUC”); Budget Prepay, Inc., GreatCall, Inc. and PR Wireless Inc. d/b/a/ Open Mobile (“Budget PrePay et al”); and Cox Communications, Inc. (“Cox”).

³ / Consumer Advocates, at 4. *See, also*, Consumer Groups, at 6.

⁴ / Consumer Advocates, at 4.

high cost areas.⁵ Consumer Advocates recognize the limited nature of universal service funds, but caution the FCC against elevating a priority for disbursing funds to carriers for nebulous and hard-to-enforce broadband deployment commitments above a consumer-oriented broadband subsidy program. The FCC should not shortchange the nation's neediest consumers of subsidies for affordable broadband access. The purpose of universal service funding is to benefit consumers, not carriers; the ABC Plan, for example, overcompensates companies while requiring minimal accountability.

1. Scope of Funding

The FCC seeks comment on whether universal service funds should be used to fund equipment and training as part of the envisioned broadband pilots. Consumer Advocates continue to believe that other programs are better suited to address the barriers to broadband adoption associated with equipment.⁶ Many commenters concur and cite problematic equipment leasing arrangements.⁷ Consumer Advocates acknowledge Sprint and Cox's concern that equipment is a barrier to broadband adoption,⁸ but continue to believe that other organizations have a role here.

⁵ / CenturyLink, at 2.

⁶ / Consumer Advocates, at 4.

⁷ / See, e.g., Consumer Groups, at 5, 8; TracFone, at 2. See, also, Michigan PSC questioning whether leasing arrangements are "cost-effective" for consumers. Michigan PSC, at 3.

⁸ / Sprint, at 4; Cox, at 4.

2. Consumer Eligibility for Pilot Program

The FCC seeks comment on whether it should apply the same eligibility requirements for the broadband pilot program that are used for Lifeline voice services, and on the Benton Foundation proposal to raise the income threshold to 150% above federal poverty guidelines and allow residents of group homes to participate. As noted by Consumer Advocates in initial comments,⁹ the Benton Foundation proposal comports with the eligibility requirements being considered by the FCC for voice services¹⁰ and as recommended by the Federal-State Joint Board on Universal Service, Lifeline and Link Up.¹¹ Consumer Advocates continue to believe that the 150% threshold is reasonable. Many commenters agree that the broadband eligibility requirements should mirror those for telephone Lifeline subsidies¹² and furthermore, that the 150% threshold should apply to both.¹³ As noted by Sprint: “Broadband adoption data shows a marked increase in adoption in households with incomes over \$40,000 to 85 percent from 59

⁹ / Consumer Advocates, at 5.

¹⁰ / *2011 Lifeline NPRM*, at para. 157. The proposal garnered a lot of support. See Rate Counsel April 21 2011 Comments, at 3; NASUCA May 25 2011 Reply, at 6. See, also, general support by other commenters, including Benton, et al. Comments at 5; Budget Comments at 6-7; COMPTTEL Comments at 18-19; Conexions Comments at 8; Cox Comments at 9; DCPSC Comments at 4; PUCO Staff Comments at 15.

¹¹ / *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision*, 25 FCC Rcd 15598 (Jt. Bd. 2010) (2010 Recommended Decision), at 15601, para. 10.

¹² / Michigan PSC, at 2; Sprint, at 2.

¹³ / NASUCA has repeatedly advocated in support of this change, ever since the FCC’s Further Notice of Proposed Rulemaking issued in WC docket No. 03-109 in 2005. See e.g. In the Matter of Lifeline and Link-Up, WC Docket No. 03-109, Comments of NASUCA on the Further Notice of Proposed Rulemaking (filed Aug. 23, 2004) with supporting affidavit of Roger D. Colton; NASUCA Reply Comments (filed Oct. 4, 2004); Comments of NASUCA to Refresh the Record (filed Aug. 24, 2007); NASUCA Reply Comments to Refresh the Record (filed Sept. 20, 2007); In the Matter of High Cost Universal Service Support, WC Docket No. 05-337, et al., Comments of NASUCA to Refresh the Record at 27-28 (filed July 7, 2008). See, e.g., Consumer Groups, at 4; Sprint, at 2; California PUC, at 4; Budget PrePay et al, at 2.

percent for households with incomes between \$20,000 and \$40,000. At 150 percent, the FPG, for a family of four is \$33,525, and at 175%, the FPG for a family of four is \$39,113.”¹⁴

As stated in initial comments, “The establishment of an identical threshold for voice and broadband service will ensure that there is less confusion among participants; eligible telecommunications carriers (“ETCs”); social services agencies; and potential participants than if the eligibility requirements were distinct for broadband. Indeed, a supported service is a supported service and consumers should have one income eligibility requirement for all supported services.”¹⁵ Others agree that confusion would be limited and administrative costs would be lower as a result of the adoption of similar eligibility requirements.¹⁶

3. Barriers to Consumer Participation

Consumer Advocates recommend that the FCC apply “lessons learned” regarding consumer participation from its Lifeline and Link Up programs to any new broadband program. The low Lifeline participation rate by eligible consumers (approximately one-third) underscores the importance of minimizing barriers to program participation in order to encourage widespread broadband adoption by all households. The FCC should design and evaluate pilot programs carefully, gleaning relevant information from those that administer existing Lifeline and Link Up information to avoid having to “re-learn” the most effective processes for reaching out to and enrolling eligible households in the pilot broadband program.

¹⁴ / Sprint, at 2 (cites omitted).

¹⁵ / Consumer Advocates, at 5-6.

¹⁶ / See, e.g., California PUC, at 5; Cox, at 9.

Consumer Advocates support Consumer Groups' recommendations, which provide specific and detailed measures intended to facilitate participation by eligible households in a broadband pilot program. Consumer Groups recommends that those providers who seek to participate in the broadband pilot program include the following specific information in their proposals to enable the Commission to assess the merits of the providers' proposals:

- Assurance of a prompt enrollment timeline for enrollment (to minimize the time between an application's submission and the eligibility determination and enrollment);
- Plan for coordination of the broadband pilot application process with the Lifeline and Link Up application process;
- Plan for providing multiple ways for consumers to apply (*e.g.*, auto-enrollment, paper application, online enrollment, etc.);
- Assurance of adequate customer service representative training so that representatives are able to respond to consumer questions about the terms and conditions of the pilot program; and
- Plan for providing outreach, education and customer support regarding the pilot broadband services in the predominant languages of the targeted consumer demographic and in alternative formats for those who cannot use standard forms of communication because of a disability.¹⁷

¹⁷ / Consumer Groups, at 7.

Consumer Advocates also recommend that potential providers address the following in their proposals and that the FCC specifically consider the following as part of any evaluation of pilot broadband programs:

- Clarity of enrollment forms (so that the forms do not cause unnecessary applicant error, which, in turn, would delay in enrollment)
- The number of steps necessary for enrollment;
- The interval of time necessary for accomplishing each step of the enrollment process (the process should facilitate timely enrollment and prevent undue delay); and
- The provider's actual performance relative to the criteria, discussed *supra*, that providers have addressed in their proposals.

Consumer Advocates also support Consumer Groups' recommendation that the Commission, in the evaluation phase, require a summary of the number and type of consumer complaints received from broadband pilot participants.¹⁸ Consumer Advocates recommend that providers be required to include a toll-free number in their outreach and application materials for complaints about the Lifeline ETC's enrollment process.

In their initial comments, Consumer Advocates expressed support for the National Association of Regulatory Utility Commissioners' ("NARUC") July 20, 2011 broadband pilot resolution.¹⁹ Others similarly support the NARUC resolution.²⁰

¹⁸/ *Id.*

¹⁹ / Consumer Advocates, at 6. The NARUC resolution states that: "the FCC should require that Lifeline/Link-Up Broadband Service Pilot Program participants are not required to change local telephone service providers, purchase bundled broadband and voice services or otherwise are penalized in order to obtain Lifeline and Link-Up broadband services and enabling access devices."Resolution Supporting a Low-Income Broadband Service Adoption Program, adopted by the NARUC Board of Directors July 20, 2011.

B. One-Per-Residence Limitation

The FCC has proposed a limitation of one Lifeline and Link Up discount per residential address.²¹ In the Public Notice, the FCC seeks focused comments on the issue. Consumer Advocates have expressed concerns related to defining residence and do not repeat all of those here.²² However, Consumer Advocates concur with Consumer Groups that: “Limiting Lifeline benefits to one-per-unique street address discriminates against many of the most vulnerable low-income consumers: those who live in group housing, have doubled-up because they cannot afford separate housing, use P.O. Boxes, or are homeless.”²³

Numerous commenters highlight the difficulties with focusing on physical residences to determine eligibility and limit benefits. It is clear that the various proposals for work-arounds continue to be inadequate to address many scenarios and to ensure that the most vulnerable and those with precarious housing situations can obtain Lifeline subsidies. The FCC should be wary of adopting overly complex and/or discretionary procedures that may inhibit participation in a program that already has such low a low rate of participation. For example, Consumer Groups indicate that there are still too many denials even with TracFone’s work-around process.²⁴ Consumer Advocates concur with Consumer Groups that if the FCC continues to focus on residential address that it should rely on collateral contact to establish residency and include the

²⁰ / California PUC, at 6; Budget PrePay et al, at 2.

²¹ / *2011 Lifeline NPRM*, at para. 106.

²² / Consumer Advocates, at 7-9.

²³ / Consumer Groups, at 5.

²⁴ / *Id.*, at 10.

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in the list of federal benefits programs that establish eligibility.²⁵

Some commenters question whether the FCC should define household if it hasn't yet determined the purpose of Lifeline. Michigan PSC states: "If the Lifeline discount is intended to ensure that there is one telephone in every home for critical calls, the Lifeline service should be limited to one per household, regardless of who or how many persons live in the building. If the Lifeline discount is intended to ensure that every independent adult has personal access to a phone, the Lifeline service should be limited to one per independent adult."²⁶ Indeed, some commenters propose that the FCC consider a one-per-adult Lifeline benefit.²⁷ Consumer Advocates do not support one-per-adult approach. This is outside of the narrow issues for which the FCC requested comments and although some commenters support one-per-adult approach, Consumer Advocates do not agree.

C. Link Up

The FCC seeks comment on eliminating Link Up support and reimbursemen, basing Link Up reimbursement on actual costs, and on providing reimbursement only in situations when a service call to the residence is required for service initiation. The FCC should set a reasonable reimbursement cap based on cost. Under no circumstances should the Lifeline fund pay for service initiation fees that are only applied to Lifeline consumers.

²⁵ / *Id.*, at 11.

²⁶ / Michigan PSC, at 3.

²⁷ / COMPTTEL, at 3; AT&T, at 2; Budget PrePay et al, at 4.

Consumer Advocates agree with Michigan PSC and COMPTTEL that activation fees can create a barrier to subscribership for low-income consumers.²⁸ However, under no circumstance should Lifeline consumers be charged activation fees that non-Lifeline consumers do not face. Therefore, Consumer Advocates do not agree with AT&T's statement that: "As an initial matter, if the Commission chooses to eliminate Link-Up reimbursement, or limit the circumstances in which a provider may seek Link-Up reimbursement, it must correspondingly eliminate or limit a provider's obligation to provide Link-Up discounts to eligible low-income consumers."²⁹ The subsidy should not cover artificial costs concocted for the sole purpose of obtaining subsidies, nor should the USF Link Up funds be used to subsidize costs that are not related to connecting that customer and establishing an account.³⁰

COMPTTEL contends that Link Up subsidies include more than physical installation but also administrative costs associated with opening a consumer's account.³¹ Consumer Advocates acknowledge that initiating service may not require physical installation of a service but that non-recurring wireline costs may cover costs of making a line available, provisioning the service, and opening the account.³² However, the FCC should determine a reasonable reimbursement cap based on cost³³ and any such fees should only be reimbursed when they are applied to all of the ETC's customers. Consumer Advocates disagree with COMPTTEL's assertion that the Low

²⁸ / Michigan PSC, at 4; COMPTTEL, at 2, 8.

²⁹ / AT&T, at 9.

³⁰ / See TracFone at 6 describing LinkUp as a "blatant example of waste, fraud and abuse of USF resources."

³¹ / COMPTTEL, at 2.

³² / CenturyLink, at 4.

³³ / See Consumer Advocates, at 9-10.

Income program should compensate ETCs for revenues they forgo for Link Up services, as opposed to costs.³⁴

D. Verification of Consumer Eligibility for Lifeline – Sampling Methodology

In the *2011 Lifeline NPRM* the FCC proposed to amend Section 54.410 of its rules to establish a uniform method of verification sampling for all ETCs in all states. The FCC is now seeking additional comment.³⁵ While Consumer Advocates recognize that small ETCs should not be unduly burdened, any verification sample size must be large enough to provide meaningful results.³⁶ Other commenters recognize that small ETCs should be required to sample enough customers so as to provide a statistically significant result.³⁷ AT&T's opposition to the FCC's sample and census proposal because it may trigger a requirement to verify the eligibility of all customers in a given year,³⁸ is not credible. A census is required only after a sample has indicated that there is an unacceptable level of ineligibility. As stated in initial comments: "Lifeline recipients have obligations related to their Lifeline service, but verification and de-enrollment must be undertaken with great care and consumers should be clear about their obligations to respond to certification requests when they initially sign up for Lifeline service."³⁹

³⁴ / COMPTTEL, at 2.

³⁵ / Notice, at 7-8.

³⁶ / CenturyLink, at 4.

³⁷ / See, e.g., Michigan PSC, at 4-5.

³⁸ / AT&T, at 11.

³⁹ / Consumer Advocates, at 12.

III. CONCLUSION

Consumer Advocates continue to support efforts by the FCC to address broadband affordability; Lifeline eligibility issues; and waste, fraud, and abuse related to the Universal Service Fund. Consumer Advocates urge the FCC to consider the views set forth here and in initial comments and to consider the impact of any proposals to reform the Lifeline and Link Up programs on Lifeline participants, eligible Lifeline participants, and on consumers who pay into the fund.

Respectfully submitted,

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